

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

WILLIE CRISS, et al.,

Plaintiffs,

v.

CIVIL ACTION NO. 2:09-cv-00543

ACTAVIS TOTOWA, LLC., et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

Pending before the court is Defendants' Rule 41 motion to dismiss for failure to comply with the timing and procedures of pretrial order no. 29 [Docket 20]. For reasons discussed below I **DENY** the motion.

On July 2, 2009, I issued PTO #29 which ordered plaintiffs in multi-plaintiff actions, with the exception of the first-named plaintiff, to file severed and amended complaints and pay the appropriate filing fee no later than August 3, 2009. The instant action was one of three multi-plaintiff actions subject to PTO #29. Plaintiffs Frank Heppel and Linda Weadock failed to comply with PTO #29 by the deadline. The defendants contacted plaintiffs' counsel in writing concerning the failure to comply and voluntarily extended the deadline to cure. Due to a series of events noted in plaintiffs' response, the letter was not received until after the deadline extension expired and the subsequent filing of defendants' motion to dismiss. Plaintiffs' filed a timely response to defendants' motion to dismiss.

Finding that (1) the defendants' were obviously willing to allow plaintiffs to correct their

failure to comply beyond the court ordered deadline; (2) the plaintiffs have admitted their failure to docket the appropriate deadline and have taken remedial steps to ensure that all court deadlines are properly docketed in the future; (3) the failure was not an attempt to purposefully delay these proceedings; and (4) the plaintiffs have fully cured the outstanding procedural deficiencies outlined in defendants' motion in accordance with PTO #29, I accordingly **DENY** the motion to dismiss.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: August 21, 2009


Joseph R. Goodwin, Chief Judge